



*A broad-based coalition to preserve the integrity of
Michigan's model No-Fault Insurance System*

216 N. Chestnut Street, Lansing, MI 48933 (517) 882-1096

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November 13, 2014

To: House Insurance Committee Chair Lund
House Insurance Committee Members

From: Kevin A. McKinney, CPAN Legislative Coordinator

Re: HB 5854

The Coalition Protection Auto No-Fault (CPAN) has shared our summary with your offices earlier in October but wishes to again provide you with our overall concerns with the policy contained in HB 5854. CPAN continues to strive for efficiencies in the administration and delivery of benefits and services to those catastrophically injured in an auto accident.

We look forward to a future discussion with the administrators of the Michigan Assigned Claims Fund, the Michigan Automotive Insurance Placement Facility (MAIPF), to ascertain the best way to address concerns they have raised. However, at this time, during the lame duck session, we oppose further advancement of HB 5854 by reporting it out of the House Insurance Committee.

Thank you.



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**ANALYSIS OF HB 5854
(Changes to the Michigan Assigned Claims Plan)**

By: George T. Sinas
CPAN General Counsel
Sinas Dramis Law Firm
October 8, 2014

On September 23, 2014, Representative Peter Lund introduced House Bill 5854, which makes sweeping and destructive changes to the operation of the Michigan Auto No-Fault Assigned Claims Plan. The Assigned Claims Plan was designed to make sure that people who do not have any no-fault insurance because they do not own or drive a motor vehicle or live with a relative who does, are nevertheless entitled to no-fault benefits if they sustain injury in a motor vehicle accident where there is no other auto insurance applicable to the claim. The Assigned Claims Plan does not provide benefits to people who violate their legal duty to purchase auto insurance. Rather, it is an important safety net that makes sure the cost of providing care to auto accident victims does not get shifted onto the backs of taxpayers. Currently, the Assigned Claims Plan is administered by the Michigan Automobile Insurance Placement Facility (MAIPF). This bill frustrates the objective of the Assigned Claims Plan by making it much more difficult for otherwise eligible victims to recover no-fault benefits. The Bill erects numerous technical barriers and procedural obstacles that claimants must strictly satisfy or lose their right to receive no-fault PIP benefits. Likewise, medical providers will lose the right to recover reimbursement for necessary medical treatment that was rendered to such claimants if there is non-compliance with the new technicalities created by this Bill. The highlights of this proposed legislation are discussed below:

(1) **THE NEW DUE DILIGENCE REQUIREMENT**—Section 3172(1) (pg 8)—This provision makes eligibility for no-fault benefits dependent upon whether the person *"can demonstrate, after exercising due diligence"* that one of the three current entitlement scenarios exists. In other words, it is not enough for a claimant to actually be qualified under one of the three scenarios—the claimant must first show the exercise of *"due diligence"* to prove that fact.

- (2) **THE NEW CLAIM FORM AND SATISFACTORY PROOF REQUIREMENT**—Section 3172(3) (pg 9)—This provision makes eligibility for no-fault benefits dependent upon the person filing *“a completed application on a claim form provided by the Michigan Automobile Insurance Placement Facility and provide a satisfactory proof of loss to the Michigan Automobile Insurance Placement Facility. . . . The Assigned Claims Plan must define the requirements for a satisfactory proof of loss.”* This provision creates two new eligibility requirements. First, the person must submit the claim on a special form designed by the MAIPF, rather than simply submitting the claim in writing, as is the current practice. Second, the claimant must also demonstrate *“satisfactory proof of loss,”* which is a concept that is not defined in the Bill and is left to the total discretion of the MAIPF to define.

- (3) **FORM OVER SUBSTANCE DENIALS**—Section 3173a(1) (pg 12)—This provision gives the MAIPF the absolute right to deny payment of any claim *“based on the submission by the claimant of a completed claim form and a satisfactory proof of loss. . . .”* In other words, if the claimant does not use the right form and use the magic words, lifetime no-fault benefits will be lost.

- (4) **NEW COOPERATION AND EXAMINATION REQUIREMENTS**—Section 3173a(1) (pg 12)—This provision creates three additional new requirements for eligibility. First, the claimant must *“cooperate in the investigation”* of the claim. However, there is no definition of the meaning to *“cooperate.”* Second, the claimants must submit to *“examinations under oath.”* Third, the claimant must submit to *“examinations by physicians selected by the Michigan Automobile Insurance Placement Facility or by the insurer assigned the claim,”* as a pre-condition to receiving benefits. However, there are no limitations regarding the scope and extent of such examinations. None of these requirements are found in the existing no-fault law.

- (5) **AN ABSOLUTE ONE YEAR STATUTE OF LIMITATIONS**—Section 3174 (pg 13)—This provision creates an absolute requirement that all claims be submitted *“one year after the accident,”* regardless of whether the claim is one on behalf of an infant or a mentally incompetent person. This requirement is a substantial limitation on the time requirements applicable under the original no-fault law.

- (6) **ELIMINATION OF THE 30-DAY GRACE PERIOD**—Section 3174 (pg 14)—This provision deletes the current rule in the No-Fault Act which allows a

claimant or a medical provider to file suit against the servicing no-fault insurer within 30 days after notice of the assignment to that insurer was received. Under this Bill, the only way to protect a claimant's eligibility for no-fault benefits and a provider's right to reimbursement, is to file a lawsuit against the Assigned Claims Plan within one year of the date of the accident. This could result in a significant loss of reimbursements by major medical providers, particularly hospitals. It will also result in unnecessary litigation and increased legal costs for all concerned.

HB 5854 is clearly calculated to disqualify deserving claimants and their medical providers from no-fault PIP benefit coverage. The Bill works considerable hardship on many accident victims who will be tripped up by the technical and onerous new claim processing rules. Particularly vulnerable are senior citizens who live in households where there are no insured automobiles and who, in many scenarios, must turn to the Assigned Claims Plan for no-fault PIP benefits. Also negatively impacted will be minor children who live in households where there is no no-fault coverage. The consequences of such disqualifications will result in a major cost shift of medical care expenses from auto insurers, who currently have the legal obligation to provide such care, to other sectors of the Michigan economy, including the Medicaid program and private health insurance—neither of which come close to providing the same level of benefits that are available under Michigan's current auto no-fault law. The Bill is clearly bad public policy.